

HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES

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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 14, 2019
86th Legislature, Number 65
The House convenes at 10 a.m.
Part One

The bills analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

The House also will consider a Local, Consent, and Resolutions Calendar.

All HRO bill analyses are available online through TLIS, TLO, CapCentral, and the HRO website.



Dwayne Bohac
Chairman
86(R) - 65

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Tuesday, May 14, 2019

86th Legislature, Number 65

Part 1

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SUBJECT: Continuing the Texas Veterans Commission

COMMITTEE: Defense and Veterans' Affairs — committee substitute recommended

VOTE: 6 ayes — Flynn, Tinderholt, Lopez, Lozano, Reynolds, Romero

0 nays

3 absent — Ashby, Hinojosa, Ramos

SENATE VOTE: On final passage, April 4 — 31-0

WITNESSES: *On House companion bill, HB 1327:*

For — (*Registered, but did not testify*: Lee Johnson, Texas Council of Community Centers)

Against — Manuel Jimenez, ATX Veterans; Zach Migura, Veterans County Service Officers Association of Texas; Steven Price, The Voices of Our Veterans; Fidel Acevedo; Bryan Register

On — Tamara Aronstein, Sunset Advisory Commission; (*Registered, but did not testify*: Jim Brennan, Texas Coalition of Veterans Organizations; Thomas Palladino, Texas Veterans Commission)

BACKGROUND: The Texas Veterans Commission (TVC) was created in 1927 by the Legislature as a division of the Adjutant General's Department and was made an independent agency in 1947. Its mission is to support Texas veterans and their families by providing direct services and technical assistance, training, and grant funding to organizations that help veterans.

Functions. TVC assists veterans and their families in filing claims for benefits from the U.S. Department of Veterans Affairs (VA), helps them find jobs and start businesses, oversees educational programs that receive federal GI Bill funds, awards grant funding to organizations that support veterans and their families, connects veterans and their families to health care services and other resources, and provides training and technical assistance to community partners that serve veterans.

Governing structure. The commission is governed by a five-person board whose members are appointed by the governor to staggered six-year terms. At least three members must be honorably discharged from active service in the U.S. military, and at least one member must be a disabled veteran. Four advisory committees give input and recommendations on the grant program, veterans county service officers, veterans employment and training, and communication and outreach.

Funding. TVC took in about \$55.9 million in fiscal 2017 and spent the same amount. About \$27.1 million in funding came from general revenue funds, \$16.1 million from the lottery-funded Fund for Veterans' Assistance, \$10.2 million from federal funds, and \$2.4 million from interagency contracts.

Staffing. The commission's staff consists of 380 employees, including 80 in its Austin headquarters, 151 in local workforce development boards under the Texas Workforce Commission, and 127 working as benefit claims counselors in VA hospitals and clinics.

Veterans county service officers. State law requires counties with populations of 200,000 or more to appoint a veterans county service officer whose duties are to help process and submit claims to the VA. To be appointed as an officer, a person must meet certain criteria laid out in Government Code ch. 434, subch. B. There currently are 256 veteran county service officers in Texas.

The Texas Veterans Commission would be discontinued September 1, 2019, unless continued in statute.

DIGEST: CSSB 601 would continue the Texas Veterans Commission (TVC) until September 1, 2031, and would require the commission to set goals for and measure the performance of its staff, annually evaluate its programs, issue reports on claims decisions, add eligibility requirements for appointment as the director of the mental health program for veterans, and expand its training program for commission members. The bill also would allow county commissioners courts to appoint individuals who did not meet certain existing criteria for appointment as veterans county service officers

under certain circumstances.

Duties. CSSB 601 would require TVC to:

- annually evaluate and set priorities for each program it administered to meet the changing needs of veterans in Texas;
- annually set concrete goals for staff and measure performance; and
- establish success measures and corresponding targets for each program it administered and report the program's progress in meeting these measures and targets in any annual internal report for that program and the commission's strategic plan.

In setting priorities for staff, TVC would have to consider its strategic plan, the needs assessment, complaint data, performance outcomes, veteran survey results, staff input, and any other available information.

Evaluations. The commission would be required to evaluate claims assistance services staffing regularly to determine where counselors and special team staff were most needed. Evaluations would have to include the staff workload, number of veterans who requested but did not receive claims assistance the same day, percentage of these veterans who received assistance at a later date, and quality of claims prepared at each of the claims assistance services offices.

TVC would have to evaluate regularly the needs and performance of any special claims assistance resources provided by the Legislature, including the state strike force team and the fully developed claims team, and request to adjust staffing for these resources as appropriate.

The commission would be required to regularly collect detailed information on the outcome of claims and use that information to evaluate and improve claims assistance services. At a minimum, the commission would have to track and evaluate for each claims district:

- the quality of claims submitted to the state strike force team;
- the percentage of claims developed through claims assistance services that were processed as fully developed claims by the U.S.

Department of Veterans Affairs (VA);

- the success rate of claims and appeals developed through claims assistance services; and
- the average processing time for claims and appeals by the VA.

By December 1, 2019, TVC would have to complete the initial annual evaluation and set priorities, success measures, and corresponding targets for each program it administered. The commission would have to include the success measures and corresponding targets and any preliminary data from those measures in any annual internal reports for the relevant programs by February 1, 2020. TVC would have to include these measures and targets in its strategic plan by June 1, 2020.

Reports. TVC would have to create a consolidated report that included each claim, the corresponding decision by the VA, and the status and outcome of any appeal. The commission also would be required to publish its most recent needs assessment on its website.

Veterans county service officers. Before selecting an individual for an appointment as a veterans county service officer or assistant officer, a commissioners court that operated and maintained a veterans county service office would be required to solicit applications from individuals interested in the appointment. In soliciting applications, a commissioners court would have to post notice for at least 30 consecutive days on the TVC website and on the online system for listing state agency employment openings maintained by the Texas Workforce Commission (TWC).

If a commissioners court was unable to appoint an individual who met current statutory requirements for becoming a veterans county service officer, the commissioners court could appoint an individual who did not meet those requirements if the commissioners court provided to TVC:

- certified letters from local chapters of the Veterans of Foreign Wars and the American Legion stating that the commissioners court solicited applications from members of those chapters; and
- proof that the commissioners court posted notice soliciting applications on the commission's website and on the TWC online

system for state employment openings for at least 90 days.

An individual whose appointment was approved by TVC under the above circumstances would be eligible for certification as a veterans county service officer if the individual satisfied training and certification requirements in current law.

These provisions would apply only to the appointment of an officer that occurred on or after the bill's effective date.

Mental health program director eligibility. CSSB 601 would add eligibility requirements for a director of the mental health program for veterans. Under the bill, an individual would have to:

- have at least a master's degree in a recognized mental health field;
- be licensed in Texas to practice a mental health profession;
- have multiple years of postgraduate experience in a human services setting, such as a community mental health center, chemical dependency rehabilitation center, or residential treatment facility;
- have experience in providing mental health services with primary care teams, with preference given to a candidate with at least four years of that experience;
- have experience in providing population-based care, with preference given to a candidate with at least two years of that experience; and
- have experience in providing trauma-informed care, with preference given to a candidate with at least two years of that experience.

An individual would not be eligible to hold the position of director of the mental health program for veterans after December 1, 2019, if the individual did not meet the eligibility requirements added by the bill.

Training. CSSB 601 would apply standard Sunset recommendations to TVC regarding updates to commission member training.

The bill would take effect September 1, 2019.

SUPPORTERS
SAY:

CSSB 601 would enable the Texas Veterans Commission (TVC) to better serve Texas veterans by continuing the agency and by implementing recommendations made by the Sunset Advisory Commission.

Evaluation and reporting. The bill would allow TVC to better serve veterans in the state by requiring the commission to set performance goals for its staff, monitor staff performance, establish success measures and targets, and evaluate its claims assistance services staffing. Providing assistance to veterans in filing claims with the U.S. Department of Veterans Affairs (VA) is an essential part of the commission's responsibilities towards veterans. Requiring TVC to collect data on claims success and feedback from veterans would ensure that veterans were served with the highest possible levels of competency and efficiency.

Requiring the commission to publish its claims evaluation report and its veterans' needs assessment would ensure that all stakeholders benefited from this information while setting the priorities for TVC programs. Additionally, requiring TVC to create performance goals and provide updates on these goals would help the commission gauge its success in assisting veterans and help it identify areas for improvement.

Veterans county service officers. CSSB 601 would provide claims services to more veterans in the state by allowing county commissioners courts to appoint non-veterans as county service officers in certain cases. Twelve counties in the state reported difficulty in finding eligible candidates for veterans county service officers. While veteran peer-to-peer service is the ideal, veterans in certain counties could miss out on needed claims assistance if no county officer could be appointed that fit current requirements. The bill would remedy this problem by enabling certain non-veterans to serve in these roles, provided that they possessed the requisite knowledge of the VA claims process. This change also would align eligibility standards for veterans county service officers with those at TVC, the U.S. Department of Veterans Affairs, and nonprofits serving veterans in Texas.

The bill would ensure that veterans were always given preference for appointment as a county service officer by requiring a county commissioners court to publicize the open position on the TVC and Texas

Workforce Commission websites and to consult with local chapters of the Veterans of Foreign Wars and the American Legion.

Training. CSSB 601 would ensure that all members of TVC were cognizant of best practices in good government by requiring training and the creation of a training manual. This would allow the commission to prevent problems from arising in administering its programs and services, rather than reacting to problems after they arose.

OPPONENTS
SAY:

CSSB 601 should not allow non-veterans to serve as veterans county service officers due to the special nature of the veteran experience and the knowledge of military service that comes only from having served. Removing the veteran-to-veteran aspect of county veterans service offices could undermine veteran confidence in the claims process and the trust between claims assistants and veterans.

The problem of a shortage of veterans could be solved by providing greater state funding for county programs or by allowing Gold Star fathers and spouses to serve as veterans service county officers rather than by lowering the standards for veterans county service officers.

SUBJECT: Continuing the Texas Department of Motor Vehicles

COMMITTEE: Transportation — committee substitute recommended

VOTE: 8 ayes — Canales, Bernal, Hefner, Leman, Ortega, Raney, Thierry, E. Thompson

0 nays

5 absent — Landgraf, Y. Davis, Goldman, Krause, Martinez

SENATE VOTE: On final passage, April 11 — 31-0

WITNESSES: *On House companion bill, HB 1541:*

For — (*Registered, but did not testify:* Jeff Martin, Texas Independent Automobile Dealers Association; Mark Borskey, Texas Recreational Vehicle Association)

Against — Stephen Palacios, Bexar County Tax Assessor; David DeLeon and Richard Salas, Bexar County Tax Office; Howard Hickman

On — Ruben Gonzalez, County of El Paso Tax Collector; Shay Luedeke, Tax Assessor-Collector Association of Texas; Robert Braziel, Texas Automobile Dealers Association; (*Registered, but did not testify:* Bryan Wilson, Automobile Burglary and Theft Prevention Authority, Texas Department of Motor Vehicles; Morgan Constantino and Steven Ogle, Sunset Advisory Commission; Whitney Brewster and Corrie Thompson, Texas Department of Motor Vehicles)

BACKGROUND: The 81st Legislature enacted HB 3097 by McClendon in 2009, creating the Texas Department of Motor Vehicles (TxDMV) and transferring the Automobile Burglary and Theft Prevention Authority (ABTPA) to the department. The mission of TxDMV is to serve, protect, and advance state residents and industries with quality motor vehicle services.

Functions. TxDMV provides title, registration, and license plate services. The department also regulates motor vehicle sales, authorizes motor

carriers to operate in the state, issues oversize and overweight permits, and investigates complaints against motor vehicle licensees and motor carriers.

Governing structure. The department is governed by a board of nine members appointed by the governor. Board members serve six-year terms and consist of two licensed franchised dealers, one licensed independent dealer, one licensed manufacturer or distributor, one county tax assessor-collector, one member from a county or city law enforcement agency, one member from the motor carrier industry, and two public members.

Funding. In fiscal 2017, TxDMV received \$1.8 billion in total revenue from fees, mostly vehicle title and registration fees, of which 85 percent was deposited to the State Highway Fund. The department operated with a budget of about \$130 million from the TxDMV fund in fiscal 2017. More than half of department expenditures were spent on vehicles titles and registration.

Staffing. The department employed 698 staff in fiscal 2017, including about 500 in the Austin headquarters and the remaining allocated among 16 regional service centers.

Automobile Burglary and Theft Prevention Authority. ABTPA has its own six-member board appointed by the governor. The authority is administratively attached to TxDMV and is staffed by the department. A portion of the \$2 fee on car insurance policies is appropriated to TxDMV to fund ABTPA.

ABTPA's board awards competitive grants to local law enforcement agencies or multijurisdictional task forces based on automobile burglary and theft rates. A total of \$13.4 million in grant funding was awarded to 24 agencies and task forces in fiscal 2017.

TxDMV would be discontinued on September 1, 2019, if not continued in statute.

DIGEST: CSSB 604 would continue the Texas Department of Motor Vehicles (TxDMV) and adopt certain policy recommendations from the Sunset Advisory Commission revising registration and titling system regulations,

specifying contested cases management, eliminating or consolidating certain licenses, renaming and codifying rules of the Automobile Burglary and Theft Prevention Authority, and requiring independent dealer training. The bill also would require a study regarding alternatively fueled vehicles.

TxDMV would be continued until September 1, 2031.

Registration and titling. CSSB 604 would revise the registration and titling system by requiring counties to use electronic systems, specifying how counties could contract for services, establishing risk-based monitoring rules, and adding other regulations.

County contracting requirements. CSSB 604 would require a county tax assessor-collector who awarded a contract to a full service deputy for the performance of registration and titling services to comply with standard state contracting practices as if the assessor-collector were a state agency, including requirements related to:

- purchase methods and competitive bidding;
- determining the best value for the county;
- contracting standards and oversight; and
- contract management.

A contract would have to specify an expiration date and renewal or extension terms and include performance criteria and measures necessary to evaluate the deputy.

An assessor-collector would have to monitor and evaluate the performance of a deputy awarded a contract and use that information in determining whether to renew or extend a contract or award a new contract.

Each county tax assessor-collector who entered into a contract before the bill's effective date would have to rebid the contract using the above standards no later than March 31, 2020. TxDMV would have to provide guidance and recommendations to assist assessor-collectors in rebidding contracts.

Automated registration and titling system. CSSB 604 would allow TxDMV to adopt rules and policies for the maintenance and use of its automated registration and titling system (RTS). TxDMV would have sole authority to determine access to the system.

TxDMV would have to implement a training program by December 1, 2019, providing information on the RTS and identification of fraudulent activity related to registration and titling. The bill would require TxDMV to require a person providing registration and titling services to complete the training.

By March 1, 2020, TxDMV, in coordination with county tax assessor-collectors, would have to develop, adopt, and implement rules creating clear criteria for the suspension or denial of access to the RTS if an assessor-collector suspected abuse, fraud, or waste relating to the system by an employee or deputy.

Audits and investigations. CSSB 604 would allow TxDMV to audit or perform a compliance review of a person performing registration and titling services, investigate any provision of state functions related to registration or titling, and access any records needed to conduct the audit, review, or investigation.

A county tax assessor-collector could audit, perform a compliance review of, or investigate a person providing registration or titling services in the county and access any records needed to conduct the audit, review, or investigation. TxDMV's authority to conduct an audit or review would not be limited by a similar audit or review conducted by an assessor-collector.

The comptroller, in coordination with TxDMV, could include in a regular audit of state revenue collection the review of processes relating to a county's collection and remittance of revenue included in an audit.

Risk-based monitoring. The bill would require TxDMV by rule to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling to efficiently allocate resources and personnel.

Online registration system. CSSB 604 would require each county assessor-collector to make available to motor vehicle dealers the electronic system designed by TxDMV allowing a dealer to submit a title and registration application online in the name of the vehicle purchaser. Assessor-collectors would have to make this system available to dealers by September 1, 2020.

Contested cases and rulemaking. CSSB 604 would require the TxDMV board to adopt rules and policies establishing standards for reviewing a contested case. The rules and policies would have to:

- specify the role of division personnel in managing contested cases before the board or a person delegated power from the board, including advising on procedural matters;
- specify appropriate conduct and discussion by the board or a person delegated power regarding proposals for decision issued by administrative law judges;
- specify clear expectations limiting arguments and discussion to evident in the record held by the administrative law judge;
- address ex parte communications; and
- distinguish between using industry expertise and representing or advocating for an industry.

Automobile Burglary and Theft Prevention Authority. CSSB 604 would rename the Automobile Burglary and Theft Prevention Agency the Motor Vehicle Crime Prevention Authority and transfer the provisions of law regarding the authority to the Transportation Code.

The bill would specify that the authority could enter into contracts in its own name with the recipients of grants for certain purposes, including grants to help increase the clearance rate of fraud-related motor vehicle crimes. The authority, in consultation with TxDMV, would have to annually update standard performance measures for each category of grants.

Money appropriated to TxDMV for authority purposes would have to help address fraud-related motor vehicle crime, as well as other purposes of the

authority. Certain across-the-board Sunset recommendations, such as board member training requirements, would apply to the authority.

Representative license eliminated. CSSB 604 would eliminate the representative's license for a person who was an agent or employee of a manufacturer, distributor, or converter and performed a duty relating to promoting the distribution or sale of new motor vehicles or contracts dealers. A representative's license would expire on the bill's effective date.

Single salvage vehicle license. The bill would eliminate the salvage vehicle agent license and the classification and endorsement system under a salvage vehicle dealer license. Instead, the holder of a salvage vehicle dealer license could perform any of the activities of a salvage vehicle dealer, including:

- buying or selling salvage motor vehicles and nonrepairable motor vehicles that had been issued a salvage or nonrepairable vehicle title, respectively;
- engaging in the business of selling such vehicles at auction;
- offering or negotiating to sell such vehicles between license holders, or acting as the agent or representative for those license holders; and
- acquiring and repairing more than five salvage motor vehicles in a year for operation on a public highway.

A salvage vehicle agent license would expire on the bill's effective date.

Instead of expiring a year after issuance, a salvage vehicle dealer license would be valid for a period prescribed by the TxDMV board. The board would have to prorate the license fee to reflect the term of the license if it prescribed a term for a period other than one year.

Enforcement. The bill would allow the TxDMV board, after notice and opportunity for a hearing, to issue a cease and desist order to a person without a license who violated Occupations Code ch. 2302 regarding salvage vehicle operations or related rules.

If, after a proceeding under Occupations Code ch. 2301 regarding the sale

or lease of motor vehicles, the TxDMV board determined that a person violated that chapter or a rule, the board could order the person to pay a refund to the buyer or lessee of the motor vehicle that was the subject of the proceeding.

The bill would allow TxDMV to order a motor carrier that violated Transportation Code ch. 643, regarding motor carrier registration requirements or a related rule to pay a refund to a consumer who paid the motor carrier to transport household goods.

Provisions amending Occupations Code chs. 2301 and 2302 would not affect the validity of a proceeding pending before a court or other governmental entity on the bill's effective date. The bill would not affect an offense or violation committed before the effective date.

Independent dealer training. CSSB 604 would require TxDMV by rule to establish education and training requirements for an applicant for an original or renewal general distinguishing number who proposed to be an independent motor vehicle dealer. Applicants would be required to establish that they completed the education and training.

Alternatively fueled vehicles study. CSSB 604 would require TxDMV, using existing funds, to organize a study on:

- the impact of the alternatively fueled vehicles industry on the state;
- options available for collecting fees from owners of those vehicles to replace the loss of revenue from motor fuel taxes; and
- the feasibility and desirability of establishing a fee for those vehicles.

The study would be conducted by TxDMV, the Public Utility Commission, the Texas Department of Transportation, the Department of Public Safety, and the Texas Commission on Environmental Quality.

The bill would specify what the study was required to examine, including, but not limited to, the current revenue generated from motor fuel taxes, the net revenue generated by fees and taxes paid by owners of alternatively fueled and conventional vehicles, and alternative methods to

determine and collect road use fees.

By December 1, 2020, TxDMV would have to prepare and submit to the governor, lieutenant governor, House speaker, and the Legislature a written report including the results of the study and legislative recommendations.

This provision would expire September 1, 2021.

Other provisions. CSSB 604 would adopt several across-the-board Sunset recommendations, including provisions regarding board member training, board membership, complaints, and alternative dispute resolution.

The board member training program would include the types of board rules, interpretations, and enforcement actions that could implicate federal antitrust law by limiting competition or impacting prices charged by persons in the professions regulated by the board.

The bill would repeal provisions of law exempting an advisory committee established by TxDMV from being required to provide balanced representation between the industry and consumers.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSSB 604 would continue the Texas Department of Motor Vehicles (TxDMV) for 12 years, as the agency has largely accomplished the Legislature's goals for improved performance, according to the Sunset Advisory Commission. TxDMV is needed to continue to provide motor vehicle services and regulate industries that can harm the public.

The bill also would adopt certain Sunset recommendations relating to title and registration systems, clarifying rules on contested cases, removing unnecessary licenses, allowing for better enforcement practices, and other recommendations for the department.

County contracting requirements. By requiring counties to use standard state contracting processes when contracting full-service deputies for

registration and title services, CSSB 604 would ensure that counties followed basic, good-government practices when outsourcing state services. This would provide better oversight, enhance security, and improve competition and transparency. The bill also would require TxDMV to assist counties and would give counties enough time to rebid existing deputy contracts.

Online registration system. The bill would require TxDMV to ensure that the electronic registration and title service for automobile dealers, known as webDEALER, was available to dealers in all counties by September 1, 2020. This would ensure that the state's investment in the system was available statewide to provide more efficiency in registering and titling a vehicle on behalf of a buyer. Dealers would not be required to use webDEALER but would have the option.

Automated registration and titling system. CSSB 604 would include a Sunset recommendation to clarify TxDMV's authority to control access to the registration and titling system (RTS). This clarification would allow the department to adopt rules for the RTS, such as user access, to adhere to best practices and protect against cybersecurity threats. The bill also would allow TxDMV to suspend access to the RTS upon suspicion of fraud, providing greater protections.

Contested cases and rulemaking. The bill would adopt a Sunset recommendation to require the TxDMV board to adopt rules and policies to establish clear standards for handling contested cases. To address findings that the board was industry-oriented, the rules would have to include the distinction between the proper use of board member expertise and advocating for the motor vehicle industry.

Licenses. CSSB 604 would eliminate unnecessary and burdensome licenses, including the representative and salvage agent licenses, and consolidate the salvage vehicle dealer license by removing the different classifications of salvage dealer licenses. TxDMV received no complaints about a licensed representative or salvage agent in fiscal 2017. The endorsement system for salvage licenses is unnecessarily complex, and licensees may need to hold multiple endorsements to operate their businesses. The bill would relieve administrative and industry burdens by

removing and consolidating these licenses.

Motor vehicle shows and exhibitions. The bill should not remove the requirement for a motor vehicle licensee to give notice to and seek approval from TxDMV before a motor vehicle show or exhibition off dealership premises. Current law provides for good policing of the industry and allows the department to know what happens at offsite locations.

Deceptive advertising enforcement. CSSB 604 should not be changed to include language on prohibited advertising practices. Allowing dealers to cure an advertising violation before imposing a penalty gives a good opportunity for the dealer to respond to a warning without being penalized. A dealer would be penalized upon a second occurrence of the same type of violation. Motor vehicle advertising is highly regulated, with technical advertising rules that dealers and others must follow. Current practices serve the industry well.

OPPONENTS
SAY:

While the Texas Department of Motor Vehicles (TxDMV) should be continued, CSSB 604 would burden county tax assessor-collectors by requiring counties to follow certain state contracting standards and to use webDEALER and by giving TxDMV sole authority over the automated registration and titling system. The bill also would not include important Sunset recommendations that would remove administrative burdens and better protect the public.

County contracting requirements. The bill would require counties to use state standards when contracting with full-service deputies for titling and registration services, which would be unnecessary and burdensome. Counties currently follow state laws governing contracting under the Local Government Code, which is more appropriate than those governing state contracting guidelines. Local contracting decisions should stay at the local level.

Online registration system. The bill should allow, rather than require, county tax assessor-collectors to make available to motor vehicle dealers the webDEALER electronic system designed by TxDMV to permit a dealer to submit a title and registration application online. Tax assessor-

collectors should determine whether to approve dealers based on information such as the dealer's volume, ability, and experience. Without this discretion, there is potential for fraud or abuse of the system.

The webDEALER system is not in demand in all counties. Compliance would be costly, could hurt certain counties, and could cause private offices to close. Some report that using the system could cost millions of dollars, which can be challenging to find or justify in a small county budget. Counties should retain discretion in how they offer dealers titling and registration services.

Automated registration and titling system. CSSB 604 would give TxDMV sole authority to determine access to the registration and titling system (RTS), which could lead to arbitrary effects upon counties and both limited and full-service deputies contracted for registration and title services. The bill should include county tax assessor-collectors within that system authority, establishing a process to jointly determine access and revocation of access to RTS.

Motor vehicle shows and exhibitions. The Legislature should put language back in the bill as engrossed by the Senate that would remove the unnecessary approval process for auto shows and exhibitions. Under current law, a motor vehicle licensee cannot participate in motor vehicles shows or exhibitions, such as an ongoing vehicle display of a car at a shopping mall, without written notice and approval from TxDMV. This is an unnecessary bureaucratic process that offers no substantial consumer benefits and is duplicative with laws prohibiting vehicle sales activities from being conducted outside a dealership. TxDMV also may investigate alleged violations at a show or exhibition without this requirement. Application denials are rare. In fiscal 2017, more than 3,000 applications were approved but only one complaint was received. This approval process should be repealed to relieve administrative burdens.

Deceptive advertising enforcement. CSSB 604 would not contain a Sunset recommendation allowing TxDMV to better enforce regulations meant to prevent deceptive or misleading motor vehicle advertisements in the state. Under current law, a motor vehicle licensee could violate advertising rules without being subject to an enforcement action beyond a

warning and opportunity to cure the violation. Sunset's recommendation was to remove the statutory requirement that TxDMV allow a licensee to cure each type of advertising violation once before assessing a penalty. Such violations include bait advertisements, such as offers intended to shift a consumer's interest from the advertised product to a more expensive one, or creating any impression that a used vehicle is new. If the bill included this recommendation, TxDMV could have more flexibility and an additional tool for enforcement over those advertising violations.

OTHER
OPPONENTS
SAY:

CSSB 604 improperly would continue the Texas Department of Motor Vehicles (TxDMV), which is inefficient and dominated by the industry it purports to regulate. TxDMV's functions should be transferred back to the Texas Department of Transportation or related agencies.

SUBJECT: Continuing plumbing regulation under TDLR; discontinuing TSBPE

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 6 ayes — T. King, Goldman, Geren, Harless, Kuempel, Paddie
1 nay — Herrero
4 absent — Guillen, Hernandez, K. King, S. Thompson

SENATE VOTE: On final passage, April 4 — 19-12 (Alvarado, Hinojosa, Johnson, Lucio, Menéndez, Miles, Powell, Rodríguez, Watson, West, Whitmire, Zaffirini)

WITNESSES: *On House companion bill, HB 1670:*
For — Ned Munoz, Texas Association of Builders; (*Registered, but did not testify*: Bradley Pepper, Greater Houston Builders Association)

Against — Leonard Aguilar, Southwest Pipe Trades Association; James Berendzen, UA Local 100, Southwest Pipe Trades Association; Stanley Briers, Texas Plumbing Air Conditioning, Mechanical Contractors Association; Kevin Cleveland, Paradigm Plumbing; Joe Cooper, United Association; Troy Downs, City of Beaumont; Chris Hester and Laura Hester, Chris' Plumbing, LLC; Robert Jalnos, Texas State Board of Plumbing Examiners; David Lopez, International Union of Elevator Constructors; Jeremy Pavlich and Dustin Trevino, Plumbers Local 68; and nine individuals; (*Registered, but did not testify*: Cheri Colet Siegelin, AFSCME Local 3807 Texas Correctional Employees-Huntsville; Alicia Dover, Associated Plumbing-Heating-Cooling Contractors of Texas; James Walls, Cast Iron Soil Pipe Institute; Debbie Vukovich, Dallas Local 100; Sherry Williams, Hardin County Democrat; Trino Baltazar and Guadalupe Castillo, Local 142; Matt Melsheimer, Matthews Plumbing; Richard Lord, Plumbers Union; Michael Tupica, Plumbers and Steamfitters Local 146; Christopher Bean, Johnny Benitez, Justin Cooper, Kelly Cunningham, Jeanne Estrada, James Fisher, Dalton Ford, Jimmy Garcia, Brett Gignac, Christopher Glaser, Mariano Granados Cruz, Lauro Guzman, Fisher Hampshire, Neil Hegmann, Mario E Jimenez, Martin

Juarez, Henry LaRocca, Jose Lopez, Renaud Luccioni, Daniel Ontiveros, George Ortega, Frank Ramon, Edward Steele, and Zack Stockton, Plumbers Local Union 68; Abel Ledezma and Chris Schramek, Southwest Pipe Trades; Montserrat Garibay, Rene Lara, and Rick Levy, Texas AFL-CIO; Ronnie Smitherman, Texas Building Trades Council; Vance Ginn, Texas Public Policy Foundation; Clyff Curry, UA Local 529 Plumbers and Pipefitters; Mark Potter, UAPP Local 142; Russell Shelton, United Association; Rhonda Little, USW 13-243; Ana Gonzalez, Workers Defense Action Fund; and 34 individuals)

On — Julie Davis, Sunset Advisory Commission; Brian Francis, Texas Department of Licensing and Regulation; (*Registered, but did not testify*: David Gonzales and Carla James, Texas Department of Licensing and Regulation; Julio Cerda, Richard Herman, Lisa Hill, and Robert Jalnos, Texas State Board of Plumbing Examiners)

BACKGROUND: The Texas State Board of Plumbing Examiners was created in 1947 to protect Texas citizens against the hazards that can result from improperly installed plumbing, gas, and medical gas systems.

Functions. The agency fulfills its mission through several key activities, including:

- examining and licensing plumbers and plumbing inspectors;
- overseeing continuing education and ensuring licensees' compliance with continuing education requirements; and
- investigating and resolving complaints, including taking disciplinary action when necessary.

Governing structure. The board consists of nine members, appointed by the governor with the advice and consent of the Senate, who serve staggered six-year terms. Seven members are professionals and two represent the public.

Funding. The agency received about \$5.2 million in revenue in fiscal 2017, primarily from licensing and registration fees. It spent about \$2.6 million and transferred about \$2.5 million to the general revenue fund in fiscal 2017.

Staffing. The agency was allocated 31 staff in fiscal 2017. Most staff work at the agency's headquarters in Austin, but the agency also employs one field investigator in each of nine regions across the state.

Unless continued in statute, the agency will be abolished on September 1, 2019.

DIGEST: SB 621 would end the Texas State Board of Plumbing Examiners (TSBPE), transfer its functions to the Texas Department of Licensing and Regulation (TDLR), and create the Texas Plumbing Advisory Board to administer the department's plumbing-related activities. The bill also would institute the plumbing contractor license and its corresponding duties and would terminate designations for responsible master plumber and other categories.

Transfer of functions. Under the bill, TSBPE would be abolished and TDLR would assume its former functions. The department would be responsible for the issuance and renewal of licenses, endorsements, or certificates of registration related to the licensing of plumbers.

Board. SB 621 would create the Texas Plumbing Advisory Board as a nine-member board appointed by the governor. The board would provide advice and recommendations to TDLR on technical matters relevant to the licensing of plumbers, including examinations, licensing qualifications, plumbing code requirements, supervision, and continuing education requirements.

The membership of the Texas Plumbing Advisory Board would be similar to that of TSBPE, except that one member of the board would have to be a plumbing contractor, rather than a responsible master plumber, and one public member would be replaced by a member who was a licensed plumber. A board member could not receive any compensation for serving on the board.

Plumbing contractor. SB 621 would eliminate the responsible master plumber designation and replace some of its functions with a plumbing contractor license.

A "plumbing contractor" would be defined as a person licensed as a plumbing contractor who was a master plumber or employed a master plumber for the purpose of performing or supervising plumbing work, was authorized to obtain permits for plumbing work, assumed responsibility for the plumbing work for which the contractor was paid, and had submitted a certificate of insurance to TDLR.

A person would not be allowed to perform or offer to perform plumbing for compensation unless that person:

- held a plumbing contractor license and the proper license, endorsement, or certificate of registration to perform or supervise the performance of plumbing;
- was employed by a plumbing contractor, performed or supervised the plumbing on behalf of the plumbing contractor, and held the proper license, endorsement, or certificate of registration; or
- offered to perform plumbing and contracted with a plumbing contractor for the performance of the plumbing.

A plumbing contractor who was supervising and controlling the work of a person engaged in the business of plumbing in certain dwellings would not be required to provide continuous or uninterrupted on-the-job oversight of the person's work.

Rules. The Texas Commission on Licensing and Regulation (TCLR) would have to establish rules that:

- required, for each task involved in plumbing, a master plumber to perform the task or to provide general or direct supervision of a less experienced plumber who performed the task;
- required each plumber's apprentice and tradesman plumber-limited license holder to perform plumbing under direct supervision;
- specified the plumbing tasks that would have to be performed under direct supervision;
- specified the amount of classroom training, experience, or combination of training and experience necessary to be exempted

from supervision requirements or that would permit the plumber to perform the plumbing under general supervision;

- required the plumbing contractor and supervising plumber, if any, to assume responsibility for plumbing performed; and
- included other requirements as specified in the bill.

Licensing. The bill would eliminate certain registrations and impose several new requirements on plumbing licenses.

Elimination of certain registrations. The drain cleaner, drain cleaner-restricted registrant, and residential utilities installer registrations would be discontinued. Responsibility for their functions would be incorporated into the apprentice registration.

Reciprocity. SB 621 would allow TDLR to issue a license, endorsement, or certificate of registration to an applicant who held a similar license, endorsement or certificate issued by another jurisdiction. The bill also would prohibit TDLR from requiring an applicant for a license, endorsement, or certificate to undergo an examination as part of the application process if the applicant had held an equivalent license, endorsement, or certificate in another jurisdiction for at least two years.

Criminal history background check. TDLR would have to require applicants for plumbing licenses to submit a complete and legible set of fingerprints to the department or to the Department of Public Safety (DPS) for the purpose of obtaining criminal history record information from DPS or the FBI. TDLR would be prohibited from issuing a license to a person who did not comply with this requirement.

TDLR would have to conduct a criminal history record information check of each applicant. The department could enter into an agreement with DPS to administer the criminal history check, and could authorize DPS to collect a fee from each applicant to cover the costs incurred in conducting the check.

Expiration of licenses. A license or certificate of registration would be valid for one or two years, as determined by TDLR. The department would have to establish requirements for renewing a license, endorsement,

or certificate of registration. An endorsement would expire on the date the master plumber or journeyman plumber license of the endorsement holder expired. Any continuing education requirement applicable to the endorsement would have to be completed before the endorsement could be renewed.

Temporary licenses. TDLR would be allowed to issue temporary licenses, endorsements, or certificates of registration, which would expire 30 days after being issued and could not be renewed.

Training. TCLR would be required to establish minimum requirements for classroom training, other than a continuing education program, that the department would credit toward various licensing and supervisory requirements.

Examinations. SB 621 would require TDLR to recognize, prepare, administer, or arrange for the administration of examinations related to the licensing of plumbers and required by the bill. TDLR would have to determine the minimum requirements and passing score for plumbing licensing exams.

If an examination contained a practical component, that component would have to be administered by a plumbing examiner. TDLR would have to employ or contract with one or more plumbing examiners to administer such examination components. Examiners would have to meet certain requirements, but the bill would remove the current requirement that examiners be qualified by experience or training in plumbing practice.

Continuing education. TCLR would be required to establish minimum curriculum standards for continuing education programs and courses for persons who held a license or endorsement issued under the bill, as well as minimum qualifications for instructors of such programs and courses.

TDLR would have to approve a program, course, or instructor that met the minimum curriculum standards. A person could receive credit for participating in a continuing education program only if the program or course was approved by the department.

Field representatives and inspections. Field representatives hired by TDLR would not be required to hold a plumbing license or to be qualified by experience and training in plumbing practice. The authority of field representatives to issue citations and to check the license, registration, or endorsement of a person regulated by the bill would be repealed.

For an inspection or investigation that involved the quality of plumbing work, TDLR would be required to employ or contract with a person who held a license as a plumber to conduct or assist in the inspection or investigation.

Enforcement. The commission could establish standards of conduct for a holder of a license, endorsement, or certificate of registration, and TDLR and TCLR could enforce laws, rules, and orders related to plumbers.

Violations of relevant laws would include:

- fraudulently obtaining or attempting to obtain a license, endorsement, or registration;
- performing plumbing without holding the proper license, endorsement, or certificate of registration;
- offering to perform or performing plumbing for compensation without holding a plumbing contractor license or contracting with a plumbing contractor;
- performing plumbing in violation of the plumbing code; and
- failing to supervise plumbing as required by statute.

Dissolution of TSBPE. TSBPE would be abolished on the effective date of the bill but would continue in existence until September 1, 2020, in order to transfer its obligations, property, rights, powers, and duties to TDLR. The department would assume all of TSBPE's obligations, property, rights, powers, and duties as they existed immediately before the effective date of the bill, and all unexpended funds appropriated to TSBPE would be transferred to the department.

All TSBPE rules would be continued in effect as rules of TDLR until superseded. Licenses, endorsements, and certificates of registration issued

by TSBPE, as well as applications for licenses, endorsements, or registrations, would continue to be valid as provided by the law that was in effect immediately before the effective date of the bill. Any pending complaint, investigation, contested case, or other proceeding would be continued without change in status after the effective date of the bill.

The governor would have to appoint members to the Texas Plumbing Advisory Board by December 1, 2019. Members of TSBPE would be eligible for appointment.

Responsibilities of TDLR. Not later than September 1, 2021, TDLR would have to obtain criminal history record information using a person's name, date of birth, and other alphanumeric identifiers for each person who held a plumbing license on September 1, 2019, and had not undergone a criminal history record information check on submission of that person's initial license application.

Not later than September 1, 2023, TDLR would have to obtain criminal history record information using a person's fingerprints for each person who held a plumbing license on September 1, 2019, and had not undergone a criminal history record information check on submission of the person's initial license application. TDLR could suspend the license of a person who did not comply with the department's request to provide information or fingerprints.

The bill would take effect on September 1, 2019.

**SUPPORTERS
SAY:**

SB 621 would transfer the duties of the Texas State Board of Plumbing Examiners (TSBPE) to the Texas Department of Licensing and Regulation (TDLR) and reconstitute the independent plumbing board as an advisory board. This would provide a responsive approach to lingering issues at TSBPE and improve the organization and efficiency of plumbing industry oversight in the state.

Transfer of duties. The Sunset Advisory Commission has identified many concerns with TSBPE, including burdensome rulemaking and neglect of regulatory functions. SB 621 would address these concerns by reconstituting TSBPE as the Texas Plumbing Advisory Board and

transferring the board's duties to TDLR. The department has proven itself to be effective at occupational regulation and licensing and is well-equipped to oversee the plumbing industry.

The advisory board created by SB 621 would closely resemble TSBPE, but would reserve one more seat for plumbers than on the current board. TSBPE members would be eligible for appointment to the advisory board, allowing the board to continue to benefit from its experience and specialty knowledge while also benefiting from the oversight and expertise of TDLR.

Plumbing contractor license. SB 621 would create the plumbing contractor license, which would replace the responsible master plumber (RMP) designation. Under current law, no one can contract for a plumbing job without holding a responsible master plumber designation, which can be burdensome to obtain. Requirements that responsible master plumbers supervise all plumbing projects also can result in work not being completed in a timely manner.

Under the bill, a plumbing contractor would take on the business responsibilities that are currently the purview of the RMP, but would not be required to have plumbing expertise. Instead, the contractor would have to retain a master plumber on staff in order to supervise the plumbing work. This would help minimize disruptions to plumbing jobs and would allow contractors to quickly hire plumbers to work for a Texas-licensed master plumber during disaster recovery events.

Examinations. Texas currently faces a shortage of plumbers and a backlog for plumbing exams, which require applicants to travel to Austin to take practical exam components. SB 621 would allow TDLR to contract with third-party exam companies to develop and administer plumbing exams, improving the frequency and effectiveness of testing.

OPPONENTS
SAY:

SB 621 would reduce the role of plumbers in overseeing their own profession, inappropriately abolish a needed agency, and fail to address the backlog in plumbing exams.

Transfer of duties. Plumbing plays an essential role in public health and

safety, and its regulation should be conducted by experts with experience in the field. While the bill would create a plumbing advisory board at TDLR, the board would not have the final say in setting policy, and transitioning registration and licensing authority from an independent plumbing board to TDLR could result in a loss or devaluation in plumbing expertise. In addition, the department already is responsible for the regulation of many occupations and licenses, and assigning the duties and responsibilities of TSBPE to TDLR could overburden the department. It would be more effective and appropriate to address existing issues at TSBPE with policy, personnel, or funding changes.

Examinations. SB 621 would insufficiently address the backlog in plumbing examinations, the most pressing item on the plumbing oversight agenda. Rather than reorganize licenses or outsource exams, the bill should allow plumbing exams to be offered in more than one location.

NOTES:

According to the Legislative Budget Board, the bill would have a positive impact of \$454,107 to general revenue related funds through fiscal 2020-21.

SUBJECT: Continuing the Real Estate Commission and Appraiser Licensing Board

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — T. King, Geren, Guillen, Harless, Hernandez, Kuempel, Paddie

0 nays

4 absent — Goldman, Herrero, K. King, S. Thompson

SENATE VOTE: On final passage, April 4 — 31-0

WITNESSES: *On House companion bill, HB 1675:*

For — Lori Levy, Texas Realtors; (*Registered but did not testify*: Daniel Gonzalez and Julia Parenteau, Texas Realtors)

Against — Vance Ginn, Texas Public Policy Foundation

On — (*Registered but did not testify*: Kathryn Hricik, Sunset Advisory Commission; Douglas Oldmixon and Tony Slagle, Texas Real Estate Commission)

BACKGROUND: The Texas Real Estate Commission (TREC) was created by the 51st Legislature in 1949. The Texas Appraiser Licensing and Certification Board (TALCB) was created by the 72nd Legislature in 1991 as an independent subdivision of TREC.

In 2011, the Legislature removed TREC from the general appropriations act and legislative appropriations process, granting the agency self-directed semi-independent (SDSI) status. Unlike most state agencies, SDSI agencies are allowed to set their own fees and budgets, increase staffing levels, change performance measures, and prioritize expenditures and programs with only the approval of their governing boards. These agencies also may carry forward reserve fund balances indefinitely.

Functions. The Texas Real Estate Commission is charged with protecting

consumers by ensuring qualified and ethical service providers by upholding high standards in education, licensing, and regulation. The commission:

- licenses real estate sales agents, brokers, and home inspectors;
- licenses residential service companies;
- registers easements and right of way agents;
- registers timeshare plans;
- approves education providers, instructors, and courses for sales agents, brokers, and inspectors; and
- investigates and resolves complaints, taking disciplinary action when necessary.

The Texas Appraiser Licensing and Certification Board is responsible for consumer protection. It also licenses appraisers and appraisal management companies, ensures appraiser education courses comply with federal criteria, and investigates and resolves complaints, taking disciplinary action when necessary to enforce state statutes, board rules, and federal adopted standards.

Governing structure. The Texas Real Estate Commission is governed by nine members appointed by the governor to staggered six-year terms. Six of these members are licensed real estate brokers, and the other three members represent the public.

The Texas Appraiser Licensing and Certification Board is governed by nine members appointed by the governor who serve staggered six-year terms. One of these members is the executive secretary of the Veterans' Land Board or a designee, four members are certified or licensed appraisers, and the other four are public members.

Funding. In fiscal 2017, the commission and the board maintained a combined fund balance of about \$17 million. The commission collected about \$12.5 million in revenue and spent \$9.3 million in fiscal 2017, while the board collected about \$1.4 million in revenue from license fees and spent about \$1.4 million.

Staffing. The agency employed 102 staff members in fiscal 2017, 91 of whom were commission employees and 11 of whom were board employees. Most staff were based at the agency's headquarters in Austin, while four real estate investigators and three appraiser investigators worked in locations covering different regions of the state.

If not continued in statute, the Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board would be discontinued on September 1, 2019.

DIGEST: SB 624 would continue the Texas Real Estate Commission (TREC) and the Texas Appraiser Licensing and Certification Board (TALCB) until September 1, 2025.

Property. SB 624 would eliminate the authority of the commission or board to purchase, construct, or sell property. The bill also would prohibit TREC from borrowing money to exercise its powers relating to property. The board still would be able to lease property.

Revised reporting requirements. SB 624 would add reporting requirements to the agency's annual financial report, including requirements that the report contain:

- trend performance data for the preceding five fiscal years related to the salaries of agency personnel and the total amount of per diem expenses and travel expenses paid for each member of the agency;
- the agency's operating plan covering a period of two fiscal years; and
- the agency's operating budget showing projected budget data for a period of two fiscal years and trend performance data for the preceding five fiscal years.

The annual report also would be required to include trend performance data for the preceding five years regarding:

- the number of full-time equivalent positions at the agency;
- the number of complaints dismissed and the number of complaints

- resolved by enforcement action;
- the amount of administrative penalties assessed and the rate of collection of penalties;
 - the average time to resolve a complaint;
 - the number of license holders or regulated persons broken down by type of license and license status;
 - the fee charged to issue and renew each type of license, certificate, and registration issued by the agency, and the average time to issue a license, certificate, or registration;
 - litigation costs, broken down by administrative hearings, judicial proceedings, and outside counsel costs;
 - reserve fund balances; and
 - other data measures as listed in the bill.

The bill also would add a requirement that the agency's biennial report to the Legislature and the governor include information on the number of examination candidates; license, certificate, and registration holders; enforcement activities; and any changes in those figures.

Complaints. SB 624 would require TREC and TALCB to protect the identity of a complainant to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a complaint respondent.

If TREC determined at any time that an allegation made or formal complaint submitted by a person was inappropriate and without merit, the commission would be required to dismiss the complaint and would not be allowed to take any further action. TREC could delegate the duty to dismiss complaints to staff.

Education courses. SB 624 would eliminate fees charged and collected by the commission for applications for approval of an instructor of qualifying real estate courses, approval of a continuing education instructor, and for attendance at a program to train continuing education instructors.

The bill would authorize TREC to establish by rule minimum education

and experience requirements for course instructors teaching certain real estate or real estate inspection courses and for instructors of continuing education courses. For the commission to approve an application to offer such courses, an applicant would have to ensure that the course instructors met the minimum requirements. TREC would be allowed to deny approval to offer a course of study if the applicant was in violation of a commission order.

TALCB also could develop by rule minimum education and experience requirements for course instructors teaching qualifying or continuing education courses for appraisers or appraiser trainees. For the board to approve a course provider application, the applicant would have to ensure that the instructors met the minimum requirements.

Advisory committees. SB 624 would authorize TALCB to establish advisory committees to perform functions assigned by the board, which would be subject to statutes governing state agency advisory committees. If the board appointed an advisory committee, it would be required to adopt rules governing how the committee would be run.

Administrative changes. SB 624 would remove requirements that TREC and TALCB annually remit nonrefundable retainers to the state auditor, attorney general's office, and State Office of Administrative Hearings (SOAH). Instead, TREC and TALCB would reimburse the agencies for applicable work performed. The bill would require the commission and the board to contract with SOAH for the purpose of conducting hearings.

The bill also would require TALCB to remit collected administrative penalties to the comptroller for deposit in the general revenue fund, rather than deposit the penalty in a restricted fund maintained and operated by the board.

The board could order a person regulated by the board to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference or an enforcement order instead of or in addition to imposing an administrative penalty or other sanctions. The amount of a refund could not exceed the amount the consumer paid to the person for a service regulated by the board, and the board could not require payment of

other damages or estimate harm in a refund order.

Licensing decisions. SB 624 would authorize TREC and TALCB to deny an application for the issuance or renewal of licenses, registrations, and certificates if the applicant was in violation of a commission or board order.

The bill also would authorize the commission to suspend or revoke a license or take other disciplinary action if a licensed broker, sales agent, or real estate inspector failed to consider market conditions for the specific geographic area in which the license holder was providing service.

Standard recommendations. SB 624 would apply several standard Sunset recommendations to TREC and TALCB, including requiring the board to develop and implement policies separating the policymaking responsibilities of the board and the management responsibilities of the commissioner and staff of the board. The bill would also amend provisions on commission and board member training, the agency's complaints system, and public testimony, and would implement restrictions on board members and employees to prevent conflicts of interest.

SB 624 would require TALCB to develop a policy encouraging the use of negotiated rulemaking procedures and appropriate alternative dispute resolution procedures in accordance with the guidelines issued by the State Office of Administrative Hearings. The board would be required to coordinate the implementation of, provide training for, and collect data concerning the effectiveness of the procedures.

The bill also would remove requirements that applicants for licenses issued by TREC and TALCB be of "good moral character" and replace them with a requirement that applicants "possess the fitness to engage in the profession."

Other provisions. SB 624 also would eliminate fees charged by TREC for filing a request for a branch office license and eliminate Texas residency requirements for the apprentice real estate inspector license, broker and sales agent licenses, and appraiser trainee license.

Applicability. TREC and TALCB would be required to adopt rules and policies and enter into contracts necessary to implement the bill's provisions as soon as practicable after the bill's effective date.

The bill's provisions establishing requirements for board member training would apply to any member of the board appointed before, on, or after the effective date. Any member of the board who had completed board member training required by previous law would be required to complete additional training only on the subjects added by the bill by December 1, 2019.

Provisions on eligibility for board membership would not affect the entitlement of a member serving on TALCB immediately before the effective date of the bill to continue to serve for the remainder of the member's term.

The bill would take effect September 1, 2019, and apply only to applications submitted, acts that occurred, and penalties collected on or after that date.

**SUPPORTERS
SAY:**

SB 624 would allow the state to fulfill its continuing need to regulate the real estate and appraisal industries by continuing the Texas Real Estate Commission (TREC) and the Texas Appraiser Licensing and Certification Board (TALCB) while also eliminating burdensome administrative requirements and adding standard Sunset recommendations to the agency's governing statutes.

During its 2018-2019 review cycle, the Sunset Advisory Commission found that the commission and board had not adequately monitored their budgets or performance of essential functions, a role the Legislature principally delegated to them when it gave them self-directed semi-independent (SDSI) status. They instead put large amounts of excess revenue into building reserves even as core agency operations such as customer service suffered. For this reason, the bill would continue the agency only six years rather than the standard 12-year period.

Confidentiality of complaints. Currently, when investigating complaints,

the commission and board send a copy of the complaint, including the complainant's name, directly to the respondent. This could put individuals at risk of retaliation and discourage the filing of necessary, legitimate complaints. While license holders ultimately may learn who filed a complaint against them as the investigation process moves forward, many licensing agencies do their best to protect the identity of complainants for as long as possible. SB 624 would require TREC and TALCB to protect the identity of a complainant to the extent possible, removing an unnecessary barrier to filing complaints and increasing the likelihood that substantive issues were brought to light. The respondent would still have the right to face the complainant later in the process.

Regulation of inspectors. During the 2018-2019 Sunset review process, the Sunset Advisory Commission examined potential conflicts of interest between TREC and the real estate inspectors' industry and determined that TREC's actions did not exhibit actual conflicts of interest to justify an organizational change. Instead, Sunset staff found that the commission and the inspectors' committee advising it were working as intended, allowing for participation by inspectors and outcomes that reflect a balance between the inspection industry's interests and consumer protection.

Eliminating residency requirement. SB 624 would remove a statutory requirement for brokers, sales agents, and apprentice inspectors to establish Texas residency before applying for a license, which is an arbitrary barrier to entry into these professions that does not protect consumers.

License denials. SB 624 would give TREC and TALCB the authority to deny license renewals. They currently lack standard authority to deny renewals based on noncompliance with commission and board orders, which undermines enforcement efforts and places consumers at risk.

OPPONENTS
SAY:

SB 624 would complicate the Texas Real Estate Commission's (TREC) complaints process and continue the agency without addressing concerns about the regulation of real estate inspectors.

Confidentiality of complaints. SB 624's requirements pertaining to the

redaction of a complainant's name from a complaint when sending a copy of it to a respondent could unnecessarily preclude a respondent from adequately responding to alleged violations, create delays or inefficiencies in the investigation process, and raise due process concerns by allowing the complainant to remain anonymous at the outset. The bill would not provide adequate clarity as to when a complainant's identity could be revealed, potentially creating confusion for agency staff as to what expectation of confidentiality to give to complainants.

Regulation of inspectors. SB 624 would not address the inherent conflict of interest in the current structure of TREC, which regulates both real estate inspectors and agents and brokers. Real estate inspectors look to protect the buyer of a property in a transaction by identifying potential defects, whereas brokers and agents aim to close the deal. Because these are different interests, the inspectors either should be regulated separately under the Texas Department of Licensing and Regulation, given additional board seats on TREC, or deregulated.

OTHER
OPPONENTS
SAY:

SB 624 would perpetuate the licensing of real estate professions even though it is questionable whether these licenses are needed to provide for the public health, safety, or welfare. Real estate licenses could be eliminated entirely and replaced with less restrictive requirements, such as a registration or certification, or by market solutions, in which case the Texas Real Estate Commission could be downsized or abolished.

NOTES:

According to the Legislative Budget Board, the bill would have a positive impact of \$36,000 to general revenue related funds through fiscal 2020-21.

SUBJECT: Creating approval process for property deals by certain state agencies

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Phelan, Deshotel, Guerra, Harless, Holland, Hunter, P. King,
Parker, Raymond, Smithee, Springer

0 nays

2 absent — Hernandez, E. Rodriguez

SENATE VOTE: On final passage, April 4 — 30-1 (Watson)

WITNESSES: *On House companion bill, HB 3189:*
For — (*Registered, but did not testify:* Daniel Gonzales, Texas Realtors;
Idona Griffith)

Against — None

BACKGROUND: Agencies with self-directed semi-independent (SDSI) status are governed under Government Code ch. 472, Finance Code ch. 16, and Occupations Code ch. 1105. These agencies include:

- the Texas State Board of Public Accountancy;
- the Texas Board of Professional Engineers;
- the Texas Board of Architectural Examiners;
- the Texas Department of Banking;
- the Department of Savings and Mortgage Lending;
- the Office of Consumer Credit Commissioner;
- the Credit Union Department; and
- the Texas Real Estate Commission and its independent subdivision, the Texas Appraiser Licensing and Certification Board.

The budget of an agency with SDSI status is governed by the agency's own governing board and not by the general appropriations act, and the agency may not incur costs to the general revenue fund.

DIGEST: SB 646 would require a state agency that had self-directed semi-independent (SDSI) status under state law to obtain written authorization from the governor before allocating money to purchase real property or to construct a building on real property.

The bill would not limit the authority of the Legislature under other law to authorize construction projects or the purchase of real property.

To apply for authorization under the bill, an SDSI agency first would be required to submit to the Texas Facilities Commission a detailed description of the proposed property purchase or construction project, an explanation why the agency needed the purchase or project, and a request for an analysis by the commission of any available state property or building that would satisfy the agency's need. The agency would submit the analysis to the governor.

The agency also would submit to the governor a request for written authorization for the property purchase or construction project that included a detailed description of the purchase or project, the total amount of money required to complete the purchase or project, and the agency's justification for the project.

The bill would require an SDSI agency that received written authorization from the governor to collaborate with the Texas Facilities Commission on the purchase or project and to notify the commission and the General Land Office on completion of the purchase or project.

The bill would authorize the governor to adopt rules to implement the bill, including initial rules in the manner provided by law for emergency rules.

If an SDSI agency already had allocated money for a property purchase or construction project before the effective date of the bill but had not completed the purchase or begun the construction, the agency would be required by January 1, 2020, to make a report to the governor on the purchase or project and to obtain written authorization before allocating additional money for it.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

SB 646 would provide a uniform procedure for all state agencies with self-directed semi-independent (SDSI) status to purchase property or construct projects.

During its 2018-2019 Sunset review cycle, the Sunset Advisory Commission found that the Texas Real Estate Commission (TREC), one of the state's SDSI agencies, had been allocating revenue into its building reserve fund at the expense of core services. In its review, Sunset concluded that TREC should have its statutory purchasing and constructing authority eliminated. By requiring the approval of the governor for a property purchase or construction project, this bill would ensure that TREC and other SDSI agencies still could pursue these projects, without compromising funding for core services.

SB 646 also would encourage a more responsible approach in utilizing state-owned resources by requiring SDSI agencies to work with the Texas Facilities Commission to identify building needs and the availability of state-owned property that may satisfy those needs.

**OPPONENTS
SAY:**

SB 646 conflicts with the general purpose and idea behind self-directed semi-independent status (SDSI) agencies. An agency with SDSI status should not need outside approval to buy property, but if such approval is to be required, then it should be from the Legislature, not the governor, since the Legislature generally holds budgeting authority.

The bill also lacks any time frame for when the Texas Facilities Commission and governor would need to respond to an SDSI agency seeking to buy property or construct a building. This could prevent an agency from acting in a timely way on a real estate opportunity, especially in a fast-moving property market such as Austin.